COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
{Chapter VIII, Rule 32(2) (b)}
Description of the Case.

Criminal Appeal No. 846 of 2001
(Old No. 1990 of 1987)

Deep Raj S/o Ram Lal,
R/o House No. 211-A,
Near Malviya Nagar, New Delhi

..Appellant

Versus

State

....Opposite Party

Sri D.S. Mehta, learned amicus curiae for the appellant
Sri Amit Bhatt, learned Addl. G.A. for the State.

Approved for reporting.
Not approved for reporting.

Date April 17, 2007

(Dharam Veer, J.)

IN THE HIGH CORUT OF UTTARAKHAND AT NANINTAL

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Dated: April 17, 2007

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HON. DHARAM VEER, J.

This appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as **Cr.P.C.),** has been preferred by the appellant against the judgment and order dated 10.06.1987 passed by Sessions Judge, Tehri Garhwal in Sessions trial No. 31 of 1986, State Versus Deep Raj, whereby the learned Sessions Judge convicted the appellant under section 376 I.P.C. and awarded for 7 years R.I. as well as under Section 376/511 of I.P.C. and awarded for 7 years R.I. and both the sentences were directed to run concurrently.

2. The prosecution story in brief is that Km. Kanta, the victim, is a resident of Mayapuri, Delhi. Her mother on the faith over accused/appellant sent her daughter along with the appellant to Hardwar in connection with the treatment of chronic ailment of cough from which the prosecutrix was suffering from her childhood. On 30.06.1986, the prosecutrix in the company of the accused came from Delhi to Hardwar and stayed in Dharamshala. The prosecutrix did not know the name of Dharamshala or its location. In the F.I.R. lodged by the prosecutrix, it was alleged that the

accused/appellant committed rape with her in the aforesaid Dharamshala against her will. On the next day, the accused took the prosecutrix to the railway station on the pretext that she was to be taken to Delhi. However, she was taken to Rishikesh and she was made to stay at Hanuman Temple, Muni-ki-Reti. On 4.7.1986, the accused attempted to commit rape with the prosecutrix against her will, however she was successful in getting rid of the accused, She thereafter, went to Km. Uma, who was residing near Hanuman Temple. She told her that she was unwilling to go in the company of the accused. The prosecutrix in the company of Km. Uma was going to P.S., Muni-ki-Reti. On the way, several other persons met her and then she went to the police station and handed over written F.I.R. Ex.Ka-1, scribed by Km. Uma.

3. On the basis of the said F.I.R., the Head Mohrarrir has prepared a Chik Report i.e. Ex.Ka-4 and the entry was made in the G.D. at 21.30 P.M. on 4.7.1986, the copy of G.D. is Ex.Ka-5. Deep Raj was medically examined by Dr. Surendra Nath Ojha, P.W.2 at Suman Hospital, Narendranagar, Tehri Garhwal on 5.7.1986 at 12.15 P.M. and the medical report is Ex.Ka.-2 The girl Km. Kanta was also medically examined by Dr. Meena Raturi on 5.7.1986 at 12.10 P.M. at Suman Hospital, Narendranagar, her medical report is Ex.Ka-8. Thereafter, P.W.7 S.I., Sri P.K. Chaudhary, Investigation Officer has also prepared the site plan i.e. Ex.Ka-6 and after recording the statements and completing the investigation, the I.O. has submitted the charge sheet i.e. Ex.Ka-7 in the court of C.J.M., Tehri Garhwal. The learned C.J.M., Tehri Garhwal has committed the case to the court of

Sessions after complying with the provision of Section 207 Cr.P.C. The learned Sessions Judge has framed the charge against the accused under Section 376, 376/511 I.P.C. on 11.3.1987. The charge-sheet was read over and fully explained to the accused who pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove his case examined P.W.1 Km. Uma, who is a scriber of the F.I.R. P.W.2 is Dr. Surendra Nath Ojha, Orthopedic surgeon who has examined Deep Raj, the accused in Suman Hospital, Narnedra Nagar, Tehri Garhwal on 5.7.1986 at 12.15 P.M. P.W.3 is Km. Kanta who is the prosecutrix. P.W.4 is the Om Prakash who is the father of the prosecutrix. P.W.5, Lady Constable Pushpa Butola, a formal police witness who brought the prosecutrix from P.S. Muni-ki-Reti to Suman Hospital, Narendranagar for medical examination. P.W.6 is Vishnu Giri at whose house the prosecutrix stayed at Muni-ki-Reti for a night. P.W.7 is P.K. Chaudhary, Investigating Officer of the case. After this, the accused was examined under Section 313 Cr.P.C. and he has denied the allegations made against him and he has stated that he was falsely implicated on account of business rivalry. However, he has not produced any defence witness in his support. After hearing the learned counsel for the parties and considering all the evidence on record, the learned Sessions Judge vide his order dated 10.6.1987 has convicted the appellant under section 376 I.P.C. and awarded for 7 years R.I. as well as under Section 376/511 of I.P.C. and awarded for 7 years R.I. and both the sentences were directed to run concurrently.

Against the said order dated 10.6.1987, the appellant has filed the present appeal before this Court.

5. I have heard Sri D.S. Mehta, learned amicus curiae for the appellant and Sri Amit Bhatt, learned Addl. G.A. for the State.

6. P.W.1, Km. Uma is the scriber of the F.I.R. who has stated that on 4.7.1986 at about 8.00 P.M., she was going from her house to the hotel where her father was working. On the way, one girl named Kanta met her. She told her the story of rape committed by the accused/appellant Deep Raj. Km. Kanta, the victim requested Km. Uma to scribe an F.I.R. because the victim was an illiterate girl. Upon her dictation, the F.I.R. was written by her and it was got signed by Km. Kanta and was then handed over at the police station and that F.I.R. is Ex.Ka-1. She also proved the Ex.Ka-1.

7. P.W.3, Km. Kanta, the prosecutrix has stated that she knows accused Deep Raj for the last 1 ½ year. He was frequently coming to the house of the prosecutrix and was treating the mother of the prosecutrix as his sister and in this way the prosecutrix was treated by the accused as his niece. She also stated about ten months before, at about 8 or 9 a.m., she was about to go to the house of her aunt at Chandni Chowk, Delhi. At that time, accused/appellant Deep Raj reached the house of the prosecutrix and told her mother that he was also going towards Chandni Chowk and he will accompany the prosecutrix and will drop her at the house of her aunt. Upon the belief and faith over the accused, the

prosecutrix was permitted by her mother to accompany the accused. The accused took the prosecutrix to Chandni Chowk and from there he took her to the railway station and then she was taken to Hardwar on the pretext of getting treatment for old cough. In the morning, the prosecutrix and the accused reached Hardwar. They were taking round of Hardwar in the day and thereafter the accused took the prosecutrix and the accused reached Hardwar. The prosecutrix did not know the name of the Ashram and she reached there in the evening. She was completely tired and unable to move. Consequently, she went upstairs and slept. At about 4 o'clock in the morning, the accused went on the roof and forcibly brought the prosecutrix down stairs and took her to a room where she was made naked and was forcibly raped. The prosecutrix raised alarm but none came to her rescue. When the prosecutrix raised an alarm, the accused/appellant gave a slap to the prosecutrix and further gave threat that in case she would raise alarm, she would be killed from the knife. Thereafter, the accused told the prosecutrix at about 12 o'clock in the day that they will return to Delhi. However, instead of going to Delhi, the accused took the prosecutrix to Muni-Ki-Reti and asked her to sit under a tree. In the evening, she was taken to the house of a Baba having Filaria in his leg, known as ***^^eksVs iSj okyk ckck*****. The wife of the Baba asked the prosecutrix to take a bath. On the third day, Baba went on his work and his wife was inside the house. At about 9 or 10 A.M., the accused again went there and asked the wife of Baba to bring some articles for him. When the wife of Baba was away, the accused forcibly dragged the prosecutrix and untied her Nara, however the prosecutrix ran away

from the grip of the accused. Thereafter, she met Km. Uma who was going to her hotel. She went to the hotel and took tea with Km. Uma. In the day, she sat by the side of the river. In the evening, she again met Km. Uma and told the entire story and asked her to write a report for her. After getting the report Ex.Ka-1 scribed from Km. Uma, Km. Kanta in the company of Km. Uma went to the police station. When the prosecutrix was at the police station, Muni-ki-Reti, the accused was also seen gong towards that side. The prosecutrix informed the police that the accused was the person who had committed rape with her. Thereafter, the accused was arrested and the accused as well as prosecutrix were taken to Suman Hospital, Narendranagar for medical examination. Intimation to this effect was also sent to the parents of the prosecutrix at Delhi. They came after two days and took the prosecutrix with them.

8. P.W.4, Om Prakash, the father of the prosecutrix has stated that on 30.6.1986 at about 8:00 A.M., the accused came to his house and told that he was going to Chandni Chowk. Km. Kanta was also to go to Chandni Chowk to the house of her aunt. The accused told that he would drop Km. Kanta at Chandni Chowk. Thereafter, the accused and the prosecutrix went together but the prosecutrix did not return for about 4 or 5 days. It was also stated by him that he was under the impression that the prosecutrix will be staying at the house of her aunt. On the fifth day, he received information from P.S., Muni-ki-Reti that Km. Kanta and accused Deep Raj were arrested. Upon this intimation, this witness in the company of his wife came to Muni-ki Reti and moved an

application to the concerned Magistrate whereupon the prosecutrix was given in the custody. They went to the Delhi in the company of the prosecutrix. The prosecutrix told her parents as to how she was raped by the accused. He has further stated that on the date of the incident, the prosecutrix was aged about 16 years.

9. P.W.5 Lady Constable Pushpa Butola is a formal police witness who brought the prosecutrix from P.S. Muni-ki-Reti to Suman Hospital, Narendranagar for medical examination.

10. P.W.6 Vishnu Giri is the *"Mote Pair Wala Baba"* at whose house the prosecutrix stayed at Muni-ki-Reti. He stated that the accused was selling spare parts of stove. The accused in the company of his niece Kanta approached this witness and told that he would consult Dr.Kutti about the chronic ailment of cough from which the prosecutrix was suffering. In the evening, the accused told this witness that Km. Kanta would stay at his house in the night. The accused slept on the roof of this witness. She was permitted to stay at the house of this witness. On the next day, this witness and wife went on their work. Thereafter he did not know what happened to Kanta.

11. P.W.7 P.K. Chaudhary is the I.O. On 4.7.1986, he was posted at P.S. Muni-Ki-Reti. In the evening of 4.7.1986, Km. Kanta in the company of Km. Uma went to the police station and handed over written FIR Ex.Ka.–1. On the basis of this FIR, H.C. Suresh Chand prepared Chick FIR Ex.Ka-4 and entered the case in the G.D. vide copy Ex.Ka-5. The

investigation was retained by this witness. He interrogated Km. Kanta and Km. Uma on the same day at police station. On 5.7.1986 in the company of Km. Kanta, he went to Hanuman Temple where witness Vishnu Giri was residing in a room. The said place was inspected and site plan Ex.Ka-6 was prepared. Vishnu Giri was interrogated on the same day. On 6.7.1986, the parents of Kanta reached P.S. Muni-ki-Reti. In their company, the I.O, went to Hardwar but Kanta was unable to locate the Dharamshala where she stayed in the night and where the accused committed the rape with her. Km. Kanta was given in the custody of her parents. After completing the investigation, charge-sheet Ex.Ka-7 was given against the accused.

12. The prosecutrix Km. Kanta was medically examined by Dr. Meena Raturi on 5.7.1986 at 12.10 p.m. at Suman Hospital, Narendranagar. The genuineness of the injury report prepared by Dr. Meena Raturi was admitted by learned defence counsel hence the lady doctor was not examined. Injury report is Ex.Ka-8.

13. As per the injury report, the age of the prosecutrix is between 15 to 16 years. No. external injuries were found on the body of the prosecutrix. There was also no injury on the forearm, wrist, nail, face, breast or lower part of abdomen and further inner aspect of thigh was found and lower part of thigh was painful. Upon examination of private part of the body of the prosecutrix, it was found that the prosecutrix was in menses since 5.7.1986 i.e. the date of medical examination. The doctor also opined that there was no injury in labia majora and labia minora

nor any laceration was seen. The vagina of the prosecutrix admitted two fingers with difficulty and painfully. Hymen was also found ruptured and sign of inflammation was present, so also laceration in the vagina. Dr. Meena Raturi did not find any spermatozoa or semen spots, however she concluded on the basis of above medical examination that the prosecutrix is a case rape. The duration of rape was assessed to be more than 24 hours but less than 4 or 5 dyas. X-ray of the prosecutrix was also advised. X-ray plate is Ex.-1 and X-ray report was Ex.Ka-3. According to the X-ray report, the prosecutrix was aged between 16 to 18 years.

14. On the same day i.e. 5.7.1986 at about 12.15 P.M., the accused Deep Raj was also medically examined by P.W.2 Dr. Surendra Nath Ojha who prepared injury report Ex.Ka-2. Dr. Surendra Nath Ojha also took X-ray of the prosecutrix and proved X-ray plate and X-ray report referred to earlier.

15. I have also gone through the statement of the prosecutrix and also the medical evidence on record. The age of the prosecutrix is not disputed. The father of the prosecutrix PW4 Om Prakash is the most reliable witness on this point who has stated on oath that the prosecutirx was aged about 16 years on the date of commission of crime. The same opinion was found from the medical report prepared by lady Doctor Meena Raturi Ex.Ka-8. In the X-ray report, the age of the prosecutrix was assessed between 16 to 18 years. Since the statement of the prosecutrix finds support from the medical opinion given in the report Ex.Ka.8, it is clear that the prosecutrix was aged about 16 years.

and this finding is not vitiated from the report Ex.Ka-3 or from the statement of Dr. S.N. Ojha. His statement also indicates that the prosecutrix could be 16 years of age. Hence, there is no reason to accept the statement of the father of the victim and as such it is clear that the prosecutrix was 16 years of age on the date of incident.

16. The evidence on record shows that the accused completely betrayed the confidence reposed on him by the parents of the prosecutrix. Instead of taking the prosecutrix to the house of her aunt at Chandni Chowk, he roamed about the whole day at Chandni Chowk and in the evening he took the prosecutirx to Hardwar. They boarded train at Delhi Railway Station. It is in evidence that the prosecutrix is a chronic patient of cough from her childhood and it is also admitted by the prosecutrix and by her father. It was then natural that the accused might have given impression to the prosecutrix that he was taking her to Hardwar to consult a doctor for the chronic ailment. The prosecutrix had, therefore, no reason to suspect any evil intention on the part of the accused from Delhi to Hardwar.

17. Upon reaching Hardwar, in the evening when the prosecutrix was completely tried, the accused took her to a Dharamshala. This is also not very unnatural. The prosecutrix went over the roof and slept there and the accused remained down-stairs. It is further in the evidence of the prosecutrix that on the roof, a number of ladies and gents were sleeping and this feature is not very uncommon with a Dharamshala. Consequently, the accused could not

have any opportunity to commit rape on the prosecutrix. It appears that in the early morning, the accused could not control his sexual lust. He went on the roof, dragged the prosecutrix and brought her down. She was taken in a room and made naked. The accused pressed the breasts of the prosecutrix and forcibly committed rape with the prosecutirx. The prosecutrix cried for help but none came to her rescue. On the other hand, when she was crying, the accused gave a slap and also threatened that she will be killed from knife. Naturally the prosecutrix was not acquainted with the situation of Dharamshala at Hardwar. There is also no evidence that she visited Hardwar earlier.

18. The fact that the prosecutrix was raped does not seem to be disputed to the accused. The prosecutrix during the cross-examination gave three suggestions to the prosecutrix. One suggestion was that some other person committed rape with her when she was sleeping on the roof of the Dharamshala. Another suggestion was that she was raped when she was sitting by the side of the river on the day. The third suggestion was that the prosecutrix herself inserted something in her private part as a result of which she sustained injuries. These suggestions will itself show that the prosecutix was raped. I do not find any force in the suggestion. All these suggestions could have been appreciated if the medical report would have been that the prosecutrix was used to sexual intercourse. On the other hand, the medical evidence is that the hymen was ruptured. The vagina of the prosecutrix admitted two fingers with pain and difficulty and laceration was also found in the vagina. The laceration was noticed despite the fact that at the

time of medical examination, the prosecutirx was under menses. Under these circumstances, there is no scope for contention that the prosecutrix is a girl of loose character or easy virtues. On the other hand, medical evidence clearly shows that the prosecutrix was definitely raped. The period of rape as per medical report Ex.Ka-8 is said to be exceeding 24 hours but between 4-5 days, The medical examination was done on 5.7.1986. The possibility, therefore, that the prosecutrix was raped on 30.6.1986 or 1.7.1986 gains strength from the medical evidence. If the medical evidence supports the prosecutrix, no other evidence is required to establish the guilt of the accused/appellant.

19. Learned counsel for the appellant has contended that the age of the girl is shown as 16-18 years and in view of the facts and circumstances of the case, it is a consented matter and he has argued that the accused has not committed any rape without the consent of the girl. The argument of learned counsel for the appellant is misconceived and against the evidence as discussed above and as such is not tenable in the eye of law. The age of the prosecutrix from the basis of evidence is 16 years and the circumstances and evidence discussed above, it is clear the appellant/accused has committed the rape with the prosecutrix without her consent forcibly and he has betrayed the confidence reposed on him by the parents of the prosecutrix. Hence, as per the evidence, it is proved that the prosecutrix had not gone to Hardwar with her own consent.

20. Since the evidence of prosecutrix is wholly reliable evidence, her testimony is trustworthy, reliable and natural and no corroboration evidence was

needed. The statement of the prosecutrix is supported by the medical evidence and the statement of her father and there should be no difficulty in placing the reliance upon the prosecutrix.

21. Thus, after considering the entire facts and circumstances of the case discussed above, I am of the view that the prosecution has successfully established the case beyond reasonable doubt against the appellant/accused. Accused/appellant was rightly convicted by the trial court under Section 376 and 376/511 I.P.C. I do not find any illegality, irregularity or mistake in the judgment and order passed by the trial court. Hence, the judgment and order dated 10.6.87 passed by Session judge Tehri Garhwal, in Session trial no. 31/86 is hereby confirmed. The sentence awarded to the accused/appellant Deep Raj for 7 years R.I. under Section 376 I.P.C. as well as 7 years R.I. under Section 376/511 of I.P.C. are also hereby confirmed. Both the sentences shall run concurrently as held by the trial court.

22. The appeal is devoid of merit and is hereby dismissed. The accused/appellant Deep Raj is on bail. His bail bond is hereby cancelled and sureties are discharged. He shall be taken into custody forthwith so as to serve out the sentence awarded against him.

23. Let the record of the case be immediately sent back to the trial court concerned for compliance.

(Dharam Veer, J.)

Rajeev Dang